

RECORDATION No. 5883

Nov. 23 1970 - 1:50 PM

Interstate Commerce Commission

CONDITIONAL SALE AGREEMENT

BETWEEN

PULLMAN INCORPORATED
(Pullman-Standard division)

as Seller,

and

SANDERSVILLE RAILROAD COMPANY

as Buyer

For purchase of Fifty (50) 100-Ton, 4000 cubic foot
Covered Hopper Cars

DATED AS OF

November 6, 1970

I N D E X

	<u>Page</u>
Sec. 1. Construction, Sale and Delivery	2
2. Inspection and delivery	1
3. Payment of Purchase Price	2
4. Title to the Cars	3
5. Taxes	4
6. Patents	5
7. Indemnity	5
8. Use and Location	5
9. Compliance with Laws, Rules and Regulations .	5
10. Reports and Inspection.	6
11. Maintenance, Replacements and Insurance . . .	6
12. Defaults and Remedies	7
13. Prohibition Against Liens	8
14. Assignment by the Seller.	9
15. Successors to, and Assignment by, the Buyer .	10
16. Preliminary Conditions	10
17. Filing	11
18. Seller's Warranty of Material and Workmanship	12
19. Modification of Agreement.	12
20. Notices	12
21. Definitions	13
22. Severability of Clauses	13
23. Extension Not a Waiver	13
24. Law Governing	13
25. Successors	14
26. Section Headings	14
27. Execution in Counterparts	14

THIS AGREEMENT, dated as of November 6, 1970, by and between PULLMAN INCORPORATED, a Delaware Corporation (PULLMAN-STANDARD Division), (hereinafter referred to as the "Seller"), and SANDERSVILLE RAILROAD COMPANY, a railroad corporation of the State of Georgia (hereinafter referred to as the "Buyer");

1. CONSTRUCTION, SALE AND DELIVERY. The Seller hereby agrees to construct in accordance with the specification hereinafter referred to, sell and deliver to the Buyer, and the Buyer hereby agrees to buy from the Seller and to accept delivery, and to pay therefor as hereinafter set forth, the following described railroad equipment (such railroad equipment being hereinafter referred to collectively as "cars" and separately as "car"):

Fifty (50) 100-ton, 4000 cubic foot capacity Covered Hopper Cars as per Pullman-Standard's proposal dated June 12, 1970 and as per Builder's Specification Number 9516 dated October 15, 1970 and General Arrangement Drawing Number M-042-871-A, bearing Sandersville Railroad Company Road Numbers SAN-301 through 350, inclusive.

The purchase price for the cars as of the date of this Agreement is \$18,390.75 per car for a total purchase price of \$919,537.50 f.o.b. Seller's plant in Butler, Pennsylvania, subject to the price adjustment provision of Seller's proposal. Interest shall be paid by Buyer at the per annum rate of one (1) percent above the prime rate as and when charged by the Citizens & Southern National Bank, Savannah, Georgia (hereinafter referred to as "the aforesaid rate"), upon the diminishing balance of the purchase price (specified in Section 3 hereof), and shall be computed upon the basis of a 360-day year of twelve thirty-day months.

2. INSPECTION AND DELIVERY. The cars shall be subject during construction, to inspection by one or more inspectors or other authorized representatives of the Buyer and the Buyer may keep one or more inspectors or authorized representatives at the plant of the Seller during the construction of the cars to inspect the cars. Upon completion of each car by the Seller, the Seller shall present such cars to such inspector or authorized representative for inspection and if such car conforms to the Specifications applicable thereto such inspector or authorized representative shall execute and deliver to the Seller a Certificate of Inspection substantially in the form of Annex 1 hereto stating that such car has been inspected and found to be completed in accordance with this Agreement and the applicable Specifications.

The Seller agrees to deliver the cars to the authorized representative of the Buyer at the Seller's plant in Butler, Pennsylvania. The Buyer shall appoint and arrange to have present at the place of delivery of the cars an authorized representative to accept delivery of the cars. If the cars are then found to be in good order such representative shall accept the delivery thereof and execute and deliver

to the Seller a Certificate of Acceptance, in duplicate, substantially in the form of Annex 2 hereto, stating that the cars have been delivered in good order and accepted by him in behalf of the Buyer. Such Certificate of Inspection and such Certificate of Acceptance shall be final and conclusive evidence that the cars conform in workmanship, material, construction and all other respects to the requirements and provisions of this Agreement, without prejudice to the rights of the Buyer under the warranty of material and workmanship hereinafter set forth in Section 18, and shall constitute conclusive evidence that such cars have been duly delivered to and accepted by the Buyer. On delivery of the cars hereunder the Buyer will assume with respect thereto the responsibility and risk of loss.

The Seller agrees to use its best efforts to deliver the cars starting week of November 16, 1970, or such later date as shall be mutually agreed upon by the Buyer and the Seller, subject to delays caused by strikes, fires, accidents or other causes or contingencies beyond the Seller's control and its ability to secure materials.

3. PAYMENT OF PURCHASE PRICE. The Buyer hereby acknowledges itself to be indebted to Seller in the amount of and hereby promises to pay to the Seller, the purchase price of the cars as follows:

- A. The sum of \$919,537.50 (being the entire purchase price) shall be payable in the amounts and on the dates specified and in accordance with the provisions of Annex 3 hereto.
- B. Interest due at the rate hereinabove specified shall be paid on the diminishing balance of the purchase price from the date defined in Annex 3 hereto and such interest payments shall be made contemporaneously with payments of the installments of deferred purchase price as specified in Annex 3 hereto.
- C. All payments provided for hereunder shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of private or public debts.

The Buyer further covenants and agrees to pay interest at the aforesaid rate upon all amounts due the Seller, principal and interest, after the same become due and payable pursuant to the terms hereof.

The Buyer shall have the privilege of prepaying at any time, without the payment of any premium, any part of the deferred purchase price, together with interest accumulated to the date of such prepay-

ment on such sum so prepaid. All such principal sums so prepaid shall be applied to the payment of the last maturing principal installment or installments due hereunder.

The Buyer further agrees to pay as part of the purchase price of the cars all reasonable expenses including attorneys fees which may be incurred by the Seller in enforcing the terms and conditions of this Agreement.

All payments herein provided for shall be made by Buyer to Seller at the office of the Treasurer of Seller at 200 South Michigan Avenue, in the City of Chicago, Illinois 60604, or at such bank or trust company as Seller may designate.

4. TITLE TO THE CARS. The Seller shall, and hereby does, retain the full legal title to, and property in, any and all of said cars until Buyer shall have made all of the payments, and shall have kept and performed all of the covenants in this Agreement provided to be made, kept or performed by the Buyer, notwithstanding the delivery of the cars to, and the right to the use thereof, by the Buyer as herein provided.

The Buyer covenants and agrees that it will cause the cars to be kept numbered with the proper road numbers and to be kept plainly marked, on metal plates or with stencilling, as the Seller may direct, upon both sides of the cars covered by this Agreement, with the words "Pullman Incorporated, Owner", in letters not less than one inch in height, or other appropriate words designated by the Seller, or the Seller's assignee, and the Buyer agrees that it will not place said cars in operation or exercise any control or dominion over any part thereof until said metal plates or stencilled markings have been placed on both sides of said cars.

If during the continuance of this Agreement such identification markings shall be at any time removed, defaced or destroyed, the Buyer shall immediately and at its own expense cause the same to be restored or replaced. If by reason of a change in law or otherwise, additional identification plates or marks shall be required to protect the interest of the Seller in the cars, the Buyer shall, at its own expense, provide and install or mark and thereafter maintain the same on each car during the continuance of this Agreement.

In the event of an assignment by the Seller of its title to the cars, and of its rights hereunder in respect thereof, the Buyer shall whenever requested by the assignee, change, as promptly as practicable after such request, the identification markings on each car to indicate the title of the assignee thereof and its succession to such rights; and the Buyer will cause to be delivered to such assignee a certificate of such change. The expense of making such change in identification markings shall be borne by the party requesting such change, except that such expense shall be borne by the Buyer in the case of the first assignment of title to the cars subsequent to the delivery thereof hereunder and one further assignment.

The Buyer agrees that it will not during the continuance of this Agreement change the road number of said cars unless and until notice of any change shall have been given by the Buyer to the Seller, or to the assignee of the Seller, as the case may be.

Except as above provided, the Buyer will not allow the name of any person, association, or corporation other than the name of the Buyer to be placed on the cars or any replacements thereof, as a designation that might be interpreted as a claim of ownership thereof; but the Buyer may letter such cars with the name, initials or other insignia, customarily used by the Buyer on its cars of the same or similar character for convenience of identification of the Buyer's right to use such cars.

When and only when the Seller has been paid the full purchase price for said cars, together with interest and any and all other payments as herein provided, and all of the Buyer's covenants and conditions herein contained have been performed by the Buyer, absolute right to possession of, title to and property in the cars shall pass to and vest in the Buyer without further transfer or action on the part of the Seller, except that the Seller shall, if requested by the Buyer so to do, execute and deliver to the Buyer a bill or bills of sale of said cars, transferring all its right, title and interest in and to said cars to the Buyer free and clear of all liens and encumbrances created or retained hereby, or otherwise created or authorized by the Seller against said cars and shall execute for record or for filing in public offices such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Buyer to said cars, provided, however, that if the Seller shall have assigned its interest in and to said cars and its rights hereunder pursuant to Section 14 hereof, such assignee of the Seller shall execute and deliver to the Buyer a bill of sale conveying said cars to the Buyer and warranting the same, but only against the acts and deeds of such assignee.

5. TAXES. No deduction shall be made from any payment by the Buyer hereunder for any taxes, assessments or governmental charges levied or imposed upon the cars or the Seller, or measured by the sale of the cars, or upon the sale, shipment, delivery, or use thereof. The Buyer agrees to pay or to reimburse the Seller for all taxes, assessments and charges which may be assessed, levied or imposed upon the Seller (or which the Seller may be required to pay to any governmental body) with respect to or measured by the sale of the cars, or which may be imposed upon or with respect to the delivery of the cars to or its use by the Buyer.

The Buyer shall also promptly pay all taxes, assessments and governmental charges which from time to time may be imposed upon the cars, or the earnings arising therefrom, or operations thereof, or upon the Seller by reason of its ownership thereof, by any governmental body having jurisdiction over the cars.

6. PATENTS. The Seller will assume all responsibility for and will hold the Buyer harmless from and against any and all damages, costs, royalties and claims arising out of patent infringements which may be alleged in respect of the cars, or any part thereof, excepting those patents covering the manufacture, sale or use in said cars or any part thereof, of designs, devices, parts, arrangements, specialties and equipment specified or furnished by the Buyer and not regularly manufactured by or originating with the Seller; and as to such excepted patents the Buyer will in like manner assume responsibility and hold the Seller harmless. Each party will promptly notify the other in writing of any claim of patent infringement arising out of this Agreement, and the party assuming responsibility will promptly undertake the defense thereof.

7. INDEMNITY. The Buyer agrees to indemnify and save harmless the Seller from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and any expenses in connection therewith, including counsel fees, arising out of retention by Seller of title to the cars, or out of the use and operation thereof by the Buyer during the period that title thereto remains in the Seller.

The Buyer will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of the cars or any part thereof; provided, however, that the Seller shall not be relieved from its guaranty covering material and workmanship hereinafter in Section 18 set forth.

8. USE AND LOCATION. The Buyer, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the cars and the use thereof upon the lines of railroad owned or operated by it or over which it has trackage rights, and the cars may be used also upon connecting and other railroads in the usual interchange of traffic, from and after delivery of the cars by the Seller to the Buyer, but only upon and subject to all the terms and conditions of this Agreement.

9. COMPLIANCE WITH LAWS, RULES AND REGULATIONS. The Buyer shall comply with all the applicable laws of each jurisdiction in or through which the cars may be operated, covering the usage, operation or maintenance thereof, and with all the applicable rules and regulations of each governmental body exercising any power or jurisdiction over the cars. In the event any of such laws, rules or regulations require any alteration of, or any additional equipment or appliance on the cars or any part thereof, the Buyer shall immediately comply therewith at its own expense; and the Buyer shall maintain the cars in proper condition for operation under such laws, rules and regulations during the continuance of this Agreement; provided, however, that the Buyer shall not be required to comply with any such law, rule or regulation the validity of which the Buyer shall at the time be contesting in good faith by appropriate legal proceedings, unless in the judgment of the Seller its title and interest in the cars may be materially endangered by such noncompliance.

10. REPORTS AND INSPECTION. The Buyer hereby agrees to furnish to the Seller, if requested, once in every year as long as this Agreement shall be in force, an accurate inventory of the cars in actual service, the number and description of such cars as may have been destroyed and replaced by others, and the then location of said cars.

Within twenty (20) days after receiving advice of damage or destruction of any of the cars, Buyer shall give Seller written notice thereof, with full particulars of the extent of the loss or damage incurred.

The Seller shall have the right, but shall be under no obligation to inspect the cars at any reasonable time or times during the continuance of this Agreement. The Buyer agrees, insofar as it may legally do so, to supply rail transportation over its lines to designated agents of the Seller for the purpose of enabling such agents to reach the point where the cars are in operation for the purpose of inspection and/or assisting and instructing the employees of the Buyer, in the proper operation and maintenance of the cars.

11. MAINTENANCE, REPLACEMENTS, AND INSURANCE. The Buyer covenants and agrees that at all times after the delivery of such cars, it will maintain and keep said cars in good order and repair, at its expense, and shall bear the risk of, and shall not be released from its obligations hereunder in case of any and all damage, loss, or destruction of said cars from whatever cause arising.

The Buyer shall replace the cars, or any parts thereof, at its own cost, except as otherwise herein provided, if the cars or any of them shall be lost or destroyed from any cause whatever during the continuance of this Agreement, with other cars or parts of similar type and of substantially as good materials or construction as that lost or destroyed, or the Buyer shall promptly pay to the Seller a sum equal to the then unpaid balance applicable to such cars. The Buyer will cause any such new cars to be marked as above provided and to be numbered with the same road numbers as the cars so replaced. Any and all such replacements of cars and of any parts shall constitute accessions to the cars and shall be subject to all of the terms and conditions of this Agreement as though part of the original cars delivered hereunder, and included in the word "cars" as used in this Agreement. Title to all such new cars shall be taken initially, and shall remain, in the name of the Seller, subject to the provisions hereof.

The Buyer will at all times after delivery and acceptance of the cars and at its expense keep the cars insured (with loss payable to Seller and Buyer as their interests may appear) in a company or companies approved by the Seller against loss, damage or destruction thereof due to fire, lightning, wreck, derailment, collision, flood, tornado, cyclone, sabotage, riot or civil commotion, in an amount at least equal to the aggregate amount of the unpaid installments of

the purchase price of the cars. The Buyer shall deliver to Seller the policies for such insurance or certificates therefor. Such policy in respect of such insurance shall provide for ten days prior written notice to Seller of the cancellation of any such insurance and shall further provide that, as to the interest of Seller, such insurance shall not be altered or impaired by any act or omission of anyone other than Seller. In the event that Buyer shall fail to keep the cars insured as above provided, Seller, without impairment of any of its rights and remedies by reason of such default, may, but shall not be required to, obtain appropriate insurance and pay the premium or premiums therefor and in such event Buyer shall and will reimburse Seller for the amount of the premium so paid with interest at the aforesaid rate from the date of payment.

Any monies paid under any such insurance policy shall be applied to the then unpaid balance applicable to the damaged cars or shall be applied toward the replacement or repair of such cars. In the event that the monies are to be applied to such replacement or repair, they shall be retained by the Seller until replacement or repair of the cars lost, destroyed or damaged, but upon proof satisfactory to the Seller of such replacement or repair and if the Buyer is not then in default in any of its obligations thereunder, the Seller shall pay over such monies to the Buyer. Any monies receivable by or payable to the Buyer from any railroad, or other person or corporation because of loss or destruction of or damage to said cars for any cause whatever shall be paid over to Seller to be held and applied by it as aforesaid.

12. DEFAULTS AND REMEDIES. In the event of default by or on the part of the Buyer in prompt payment of any of the installment payments hereunder, and such default is not cured within ten (10) days, or in the due or proper performance of, or compliance with, any of the other conditions, terms or stipulations provided herein, and such default is not cured within thirty (30) days after written notice thereof to the Buyer, or in the event that a proceeding in bankruptcy or insolvency be instituted by or against the Buyer or its property and the debtor in reorganization, or any trustee or receiver appointed therein, fails to adopt and become bound by the terms, provisions and conditions of this Agreement within thirty (30) days after such appointment, the Seller shall have the right at its option to declare each and all of said installment payments and all other sums of money payable hereunder to be forthwith due and payable, and the Seller may take immediate possession of said cars, including any equipment or parts substituted, added or attached thereto, without demand, process, or further notice and, for this purpose, Seller shall have the right to enter upon the premises wherever said cars may be found, remove the same, employ any available trackage and similar facilities or means of removing same, or cause the Buyer to assist in removing same by its delivery thereof to such place on its railroad as Seller may reasonably designate for said purpose, and Buyer covenants and agrees that it will, at its own expense, forthwith and in the usual manner, cause the cars to be moved to a point or points upon the railroad of Buyer that shall

have been reasonably designated by Seller, and shall there deliver the same or cause them to be delivered to Seller; or at the option of Seller, Seller may keep the cars on any of the lines of railroad or premises of Buyer until Seller shall have sold the same, and for such purpose Seller agrees to furnish without charge for rent or storage the necessary facilities at any point or points selected by Seller that are reasonably convenient to Buyer. It is hereby expressly covenanted and agreed that the covenants in this paragraph are of the essence of this Agreement and that upon application to any court having jurisdiction in the premises, Seller shall be entitled to a decree against Buyer requiring the specific performance thereof.

The Seller may, at its election (and, if before sale or before full performance of this Agreement all costs and expenses of the Seller incidental to any such default and to the enforcement by the Seller of the provisions hereof, and all sums which shall then have become due and payable by the Buyer hereunder, other than such part of said purchase price as shall have become due only because of a declaration under this section as aforesaid, shall have been paid by the Buyer, and all other existing defaults shall have been remedied, or provisions therefor satisfactory to the Seller, shall have been made, then and in every such case the Seller shall) waive any such event of default and its consequences and rescind and annul any such declaration or termination by notice to the Buyer in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such cured default had existed and no such declaration or termination had been made; but no such waiver, rescission or annulment shall limit or affect the Seller's right, upon any other default, or impair any right or remedies consequent thereon.

In the event said cars are retaken hereunder, the Seller shall be entitled to retain or collect any and all payments theretofore made or payable hereunder by Buyer, and Seller shall sell said cars at public or private sale or sales, with or without having said cars at the place of sale, and upon such reasonable terms and in such manner as the Seller may determine; the Seller may bid at such public sale. From the proceeds of any such sale, the Seller shall deduct all expenses for retaking, repairing and selling said cars. The balance thereof shall be applied to the total amount due hereunder; any surplus shall be paid over to the Buyer, and in case of a deficiency, the Buyer shall pay the same with interest at the aforesaid rate.

13. PROHIBITION AGAINST LIENS. The Buyer hereby agrees to pay or satisfy and discharge any and all sums claimed by any party by, through, or under the Buyer and its successors or substitutes or assigns which, if unpaid, might become a lien or a charge upon the cars, but shall not be required to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title of the Seller in and to the cars.

14. ASSIGNMENTS BY THE SELLER. All or any of the rights of the Seller under this Agreement, including the right to receive the payments herein provided to be made by the Buyer to the Seller, may be assigned by the Seller and reassigned by any assignee at any time and from time to time; provided, however, that any such assignment shall not subject any assignee to, nor relieve Seller, or the successor or successors to its manufacturing property and business, from any of the obligations of the Seller as to the construction, delivery, guaranty, warranty or indemnity, or any other duty, obligation or liability hereunder, except the duty to execute necessary and proper instruments of transfer as and when the Buyer shall be entitled thereto, pursuant to the provisions of Section 4 hereof, and the duty to credit on the purchase price monies or cash remitted to such assignee by the Buyer, as provided in Section 3 hereof.

In case of assignment of this Agreement by the Seller, prompt written notice of such assignment shall be given by the Seller to the Buyer, and the Buyer shall be protected in any payments made hereunder to the Seller prior to notice of such assignment.

In the event that this Agreement be assigned by the Seller as hereinbefore provided, the rights of such assignee to the entire unpaid purchase price, or such part thereof as may be assigned, together with interest thereon as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of Seller, or the successor or successors to its manufacturing property and business, in respect of the cars or the manufacture, delivery, guaranty or warranty thereof, or in respect of any indemnity herein contained, nor be subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Buyer by Seller, or the successor or successors to its manufacturing property and business, and any and all such obligations, howsoever arising, shall be and remain enforceable by the Buyer against and only against Seller and the successor or successors to its manufacturing property and business, and shall not be enforceable against any party or parties in whom title to the cars or any of them, or the rights of the Seller hereunder, shall vest by reason of any sale, assignment, or transfer, or successive sales, assignments or transfers.

In the event of any such sale, transfer, or assignment, or successive sales, transfers, or assignments by the Seller, of title to the cars and of the Seller's rights hereunder in respect hereof, the Buyer shall, whenever requested by such vendee, transferee, or assignee, change the name plates or stencilled markings on both sides of the cars so as to indicate title of such vendee, transferee, or assignee to such cars and its succession to the rights of the Seller hereunder, such plates or stencilled markings to bear such words or

legend as shall be specified by said vendee, transferee, or assignee. The cost of obtaining and attaching the first series of such substituted plates or stencilled markings shall be borne by the Buyer. The cost of obtaining and attaching plates or stencilled markings in connection with any subsequent assignment shall be borne by such subsequent vendee, transferee, or assignee.

If this Agreement shall have been assigned by the Seller, and the assignee shall not make payment to the Seller on the due date of payment, with respect to the cars which have been delivered and accepted by the Buyer, of the amount to be paid pursuant to the Assignment, the Seller will promptly notify the Buyer of such event and if such amount shall not have been previously paid by the assignee the Buyer will, not later than ninety (90) days after such due date of payment, pay or cause to be paid to the Seller the amount so due, together with interest from the due date of payment to the date of payment by the Buyer, at the prime rate of interest of leading Boston, Massachusetts banks in effect on the due date of payment.

15. SUCCESSORS TO, AND ASSIGNMENTS BY, THE BUYER. The Buyer hereby represents and warrants that its execution of this Agreement and its assumption and undertaking of the obligations, duties and liabilities hereof, have been expressly authorized and that all the obligations then existing or to accrue to the Buyer under this Agreement, shall be assumed by any person or corporation acquiring title to or possession of the railways and properties of the Buyer, and that upon any sale, lease, transfer, or assignment of said railways or properties, any person or corporation acquiring title thereto or possession thereof shall also, as a condition to such acquisition, be bound by all such obligations.

The Buyer covenants and agrees that it will not sell, assign, transfer, or otherwise dispose of its rights under this Agreement, nor transfer possession of said cars to any other firm, person, or corporation without first obtaining the written consent of the Seller to such sale, assignment or transfer.

The Buyer hereby covenants and agrees that it will not pledge, hypothecate or in any way encumber, or permit the encumbrance of, any part or all of said cars.

16. PRELIMINARY CONDITIONS. Prior to delivery of the cars by the Seller, the Buyer will deliver, in duplicate, to the Seller an opinion of counsel for the Buyer in scope and substance satisfactory to the Seller and its counsel.

- A. As to the due authorization, execution and delivery hereof by the Buyer and legality, validity and enforceability hereof as against the Buyer in accordance with the terms hereof;

- B. As to the compliance by the Buyer with Subsections A and D of Section 17 hereof;
- C. As to the jurisdiction of any Federal or State public regulatory body or bodies over the entering into or performance of this Agreement, and, if any such regulatory body or bodies has such jurisdiction the sufficiency of any such authorization or exemption thereof or consent thereto by each such public regulatory body; and
- D. To the effect that the consummation of the transactions herein contemplated and performance of this Agreement will not result in any breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any property of the Buyer under any indenture, mortgage, deed of trust, bank loan or credit agreement, corporate charter, by-law or other agreement or instrument (other than this Agreement) to which the Buyer is a party or by which it may be bound.

In case said opinion shall show, pursuant to Subsection C above, that any regulatory body has jurisdiction over the entering into or performance of this Agreement, the Buyer will deliver in quadruplicate to the Seller at the time of delivery to Seller of said opinion of counsel, copies certified by an appropriate officer of the Buyer of the application of the Buyer to such public regulatory body, and of each amendment thereto, and copies, certified by an appropriate official of such public regulatory body, of each order issued by such public regulatory body upon the basis of such application.

17. FILING. The Buyer shall at its own cost and expense:

- A. Promptly cause this Agreement, all agreements supplemental hereto or amendatory hereof, and the first assignment of any of the Seller's rights hereunder to be duly filed (1) with the Interstate Commerce Commission and (2) wherever else required in the United States of America for the proper protection of the Seller's title to the cars and of its rights hereunder;
- B. From time to time do and perform all other acts and execute, acknowledge and deliver and file wherever required in the United States of America any and all further instruments required by law or reasonably requested by the Seller for the purpose of such protection of its title and rights or for the

purpose of carrying out the intention of this Agreement;

- C. Duly refile in each such jurisdiction each of the instruments referred to in the preceding Subsections A and B whenever required for such protection of the Seller's title and rights;
- D. Pay all taxes and fees in connection with each such filing and refiling; and
- E. Promptly furnish to the Seller a certificate or other evidence of each such filing, refiling and payment of filing fees and taxes, satisfactory to the Seller.

As used in this Agreement the term "filing" shall also include registering, recording and docketing and the term "refiling" shall also include re-registering, re-recording and re-docketing.

18. SELLER'S WARRANTY OR MATERIAL AND WORKMANSHIP. The Seller guarantees that the cars will be built in accordance with the applicable specifications and will be well made, of good material and in a workmanlike manner, and agrees that if any part of any car (except such specialties as shall have been selected, furnished or designated for use by the Buyer, and are not manufactured by the Seller), which in normal use and service, should fail because of defective material or workmanship in the manufacture thereof, within one year after delivery to the Buyer, the Seller will replace each such defectively manufactured part, free of charge, F.O.B. its factory; but the Seller will not be liable, for expense or otherwise, with respect to alterations, repairs or replacements made without its express written authorization, or for any damages whatsoever, whether direct or consequential, its liability (other than under Section 2 hereof) being limited to the replacement in the manner aforesaid of defectively manufactured parts failing within the time specified. Unless return shall be waived, defective parts shall be returned to the Seller at its factory, all transportation charges prepaid.

19. MODIFICATION OF AGREEMENT. This Agreement of Conditional sale constitutes the entire agreement between the Buyer and the Seller with respect to the sale of the cars herein referred to. No variation or modification of this Agreement, and no waiver of any of its provisions or conditions, shall be valid unless in writing and signed by the duly authorized officers of the Seller and Buyer.

20. NOTICES. Any notice to or demand upon the Buyer by the Seller pursuant hereto shall be deemed to have been given or made when deposited in the United States mail, first class postage prepaid, addressed to the Buyer's Purchasing Agent B. J. Tarbutton, Jr. at Sandersville, Georgia or at such other address as the Buyer shall

hereafter specify in writing to the Seller.

Any notice to or demand upon the Seller by the Buyer pursuant hereto shall be deemed to have been given or made when deposited in the United States mail, first class postage prepaid, addressed to the Seller at 200 South Michigan Avenue, Chicago 4, Illinois or at such other address as the Seller shall hereafter specify in writing to the Buyer.

Any notice to or demand upon any assignee by the Buyer pursuant hereto shall be deemed to have been given or made when deposited in the United States mail, first class postage prepaid, addressed to such assignee at the address of such assignee specified in the assignment relating to it or at such other address as such assignee shall thereafter specify in writing to the Buyer.

21. DEFINITIONS. The term "Seller" whenever used in this Agreement means (i) before any assignment of any of its rights hereunder, Pullman Incorporated (Pullman-Standard division), or any successor or successors to its manufacturing properties and business, and (ii) after any such assignment, any assignee or assignees of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained and not included in any such assignment.

22. SEVERABILITY OF CLAUSES. Any provisions of this Agreement prohibited by any applicable law of any jurisdiction or which by any applicable law of any jurisdiction would convert this Agreement into an instrument other than an agreement of Conditional Sale shall as to such jurisdiction be ineffective, without modifying as to such jurisdiction the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Buyer to the full extent permitted by law.

23. EXTENSION NOT A WAIVER. Any extension of time granted by the Seller to the Buyer for the payment of any sum due under this Agreement, whether that extension be for an intermediate payment or for final payment, shall not be deemed a waiver of the title of the Seller reserved hereunder nor of any of its rights and remedies hereunder or otherwise existing.

24. LAW GOVERNING. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Georgia; but the Seller shall be entitled to such additional rights arising out of the filing hereof or any assignments hereof as shall be governed by the laws of any jurisdiction in which this agreement or any assignment hereof shall be filed.

25. SUCCESSORS. This Agreement shall inure to the benefit of and remain binding upon, the successors and assigns of the parties hereto, respectively.

26. SECTION HEADINGS. Section headings herein are for convenience only and shall not affect the interpretation hereof.

27. EXECUTION IN COUNTERPARTS. This Agreement and any agreement supplemental hereto or amendatory hereof, may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute but one and the same instrument. Although this Agreement is dated for convenience as of November 5, 1970, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments annexed hereto.

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

PULLMAN INCORPORATED
(Pullman-Standard division)

By MR Bock
Vice President of
Pullman-Standard division

ATTEST:

William O. Colridge
Assistant Secretary
Pullman Incorporated

SANDERSVILLE RAILROAD COMPANY

By: Ben J. Hartshorn
President

ATTEST:

Raymond D. Hartshorn
Secretary
Sandersville Railroad Company

STATE OF ILLINOIS)

) SS:

COUNTY OF COOK)

On this 19th day of November 19 70, before me personally appeared M. R. Brock, to me personally known, who, being by me duly sworn, says that he is a Vice President of the Pullman-Standard division of Pullman Incorporated, that said instrument was signed and sealed on behalf of said corporation by authority of the Board of Directors of Pullman Incorporated, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

J. J. Clifford
Notary Public

My Commission Expires November 16, 1971

STATE OF GEORGIA)

) SS:

COUNTY OF WASHINGTON)

On this 18th day of November 19 70, before me personally appeared B. J. Tarbutton, Jr., to me personally known, who, being by me duly sworn, says that he is the President of Sandersville Railroad Company, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

J. J. Clifford
Notary Public

My Commission Expires June 20, 1977

CERTIFICATE OF INSPECTION

built by Pullman Incorporated (Pullman-Standard division)
(hereinafter referred to as "Pullman-Standard") in pursuance
of that certain Conditional Sale Agreement between Pullman-
Standard and said Railroad, dated as of November 6, 1970 ;
and he further certifies that said cars have been completed
in full accordance with the requirements of said Agreement and the
Specifications therein contained.

Duly Authorized Representative of
Sandersville Railroad Company

ANNEX 2

CERTIFICATE OF ACCEPTANCE

The undersigned, being the duly authorized representative of Sandersville Railroad Company, hereby certifies that the following railroad equipment:

has been delivered in good order and running condition by Pullman Incorporated (Pullman-Standard division) (hereinafter referred to as "Pullman-Standard") and was accepted by the undersigned on , at on behalf of said Railroad, in accordance with the provisions of that certain Conditional Sale Agreement dated as of November 6, 19 70 , between Pullman-Standard and said Railroad.

The undersigned further certifies that there was plainly, distinctly, permanently and conspicuously fastened or affixed upon each side of each of the cars at the time of its delivery and acceptance a metal plate, or stencilling bearing the following words in letters not less than five-eighths (5/8) inch in height.

"THE CITIZENS AND SOUTHERN NATIONAL BANK, OWNER".

Dated , 19 .

Duly Authorized Representative of
Sandersville Railroad Company

ANNEX 3

TO CONDITIONAL SALE AGREEMENT BETWEEN PULLMAN INCORPORATED,
AS SELLER AND SANDERSVILLE RAILROAD COMPANY AS BUYER DATED
AS OF NOVEMBER 6, 1970

There will be a single collective date of delivery and, therefore, date of closing. On this date Sandersville Railroad Company will pay all sums due under this Conditional Sale Agreement except \$450,000 which will be payable in sixty (60) equal monthly installments of principal, with interest on the unpaid principal balance at the rate of 1% above the prime rate as and when charged by the Citizens & Southern National Bank, Savannah, Georgia, the first payment being due on the first day of the month following thirty (30) days from the date of closing.

AGREEMENT AND ASSIGNMENT

BETWEEN

THE CITIZENS & SOUTHERN NATIONAL BANK,

as Assignor

and

SANDERSVILLE RAILROAD COMPANY,

as Assignee

For purchase of Fifty (50) 100-Ton, 4000 cubic foot
Covered Hopper Cars

Road Nos. SAN-301 through 350

Dated as of

November 6, 1970

THIS AGREEMENT AND ASSIGNMENT, dated as of November 6, 1970 between PULLMAN INCORPORATED, a Delaware corporation, (PULLMAN-STANDARD division) hereinafter called the "Manufacturer", and THE CITIZENS AND SOUTHERN NATIONAL BANK having a usual place of business in Savannah, Georgia hereinafter called the "Assignee";

W I T N E S S E T H:

WHEREAS, Manufacturer and Sandersville Railroad Company, hereinafter called the "Railroad", entered into a conditional sale agreement dated as of November 6, 1970, hereinafter called the "Conditional Sale Agreement" for the sale by Manufacturer to Railroad of Fifty (50) 100-Ton 4000 cubic foot capacity Covered Hopper Cars, all hereinafter referred to as the "cars", all as more particularly described therein, a counterpart of the Conditional Sale Agreement being prefixed hereto.

NOW, THEREFORE, this Agreement and Assignment witnesseth that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by Assignee to Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained;

1. Manufacturer hereby sells, assigns, transfers and sets over unto the Assignee, its successors and assigns, all the right, title and interest of Manufacturer in and to the Conditional Sale Agreement (except the right to manufacture the cars and the right to receive (a) the payments specified in the fifth paragraph of Section 14 thereof; and (b) reimbursement for taxes paid or incurred by the Manufacturer as provided in Section 5 thereof) in respect of the cars and any and all amounts (other than those excluded above) which may be or become due or owing to the Manufacturer on account of the purchase price of the cars and interest thereon, and any other sums becoming due under the Conditional Sale Agreement in respect of the cars, and all right, title and interest of Manufacturer in and to the cars as the same shall be delivered, upon payment by the Assignee to the Manufacturer of the amounts required to be paid under Section 7 hereof for such cars, together with all Manufacturer's rights, powers, privileges and remedies in respect to the cars under the Conditional Sale Agreement, without any recourse, however, against Manufacturer for or on account of the failure of Railroad to make any of the payments provided for in or otherwise to comply with any of the provisions of the Conditional Sale Agreement. In furtherance of the foregoing assignment and transfer, Manufacturer hereby authorizes and empowers Assignee, in Assignee's own name or in the name of Assignee's nominee, to ask, demand, sue for, collect, receive and enforce, any and all sums to which Assignee is or may become entitled under this Assign-

ment and compliance by Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but without expense and liability to Manufacturer and for the sole benefit of Assignee.

2. Manufacturer covenants and agrees that it will construct the cars in full and complete accordance with the Conditional Sale Agreement and that it will deliver the same on completion thereof to the Railroad free of all liens and encumbrances, except for the provisions of the Conditional Sale Agreement; that notwithstanding this assignment it will perform and fully comply with each and all of the covenants of the Conditional Sale Agreement to be performed and complied with by it; that, as set forth in and subject to the provisions of the Conditional Sale Agreement, it has legal title to the cars and that it has good right to sell the same; that it will warrant and defend the same against the lawful demands of all persons whomsoever based on claims originating prior to the delivery of the cars to the Railroad, subject, however, to the provisions of the Conditional Sale Agreement, and the rights of the Railroad thereunder; and that it will from time to time, at the request of the Assignee, make, execute and deliver all such further instruments of assignment, transfer and assurance, and do such further acts and things as may be necessary and appropriate to give effect to the provisions contained in this Assignment and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

3. This Agreement and Assignment will not transfer or in any way affect or modify (1) Manufacturer's obligation to deliver the cars in accordance with its Conditional Sale Agreement or (2) its obligations (a) to indemnify Railroad against and save and keep Railroad harmless from loss and expense resulting from patent claims and (b) to replace parts, all as set forth in Sections 6 and 18 of the Conditional Sale Agreement, respectively, the said obligations to be and remain enforceable against and only against Manufacturer as provided in the Conditional Sale Agreement or (3) Railroad's obligations under Sections 7, 14 and 15 of the Conditional Sale Agreement.

Manufacturer will indemnify Assignee against and save and keep Assignee harmless from all expense, loss or damage incurred or sustained by Assignee by reason of any defense, set-off or counterclaim of Railroad in any suit or action brought by Assignee under the Conditional Sale Agreement arising out of the alleged breach by Manufacturer of any of its obligations mentioned in the first paragraph of this Article 3, or arising by reason of any other indebtedness or liability at any time owing to the Railroad by Manufacturer.

4. Manufacturer represents and warrants to Assignee, its successors and assigns, that the Conditional Sale Agreement was lawfully executed by it for a valid consideration and that the

Manufacturer has no reasons to believe that it is not a valid and existing contract and, according to its terms, binding upon the parties thereto.

5. Manufacturer agrees to indemnify Assignee and to save and keep it harmless from and against any and all royalties, damages, claims, suits, judgments and costs which may arise from the use of any patented article, other than those specified or required by the Railroad and not manufactured by Manufacturer, constituting part of the cars when delivered.

6. At or before delivery of the cars to Railroad, Manufacturer will plainly, distinctly, permanently and conspicuously mark, on metal plates or with stencilling, on each side of said cars the following words in letters not less than five-eighths (5/8) inch in height:

"THE CITIZENS AND SOUTHERN NATIONAL BANK, OWNER".

7. Within three (3) days after receipt by it of the documents hereinafter specified, as and when any of the cars are delivered and accepted by Railroad pursuant to the Conditional Sale Agreement, Assignee will pay to Manufacturer the purchase price set forth in Section 3 of the Conditional Sale Agreement of each such car upon receipt by Assignee of the following documents in form and substance satisfactory to it:

- (a) A bill of sale from Manufacturer to Assignee transferring to Assignee title to all cars so delivered and warranting said title to be free and clear as of the time of delivery to Railroad of all liens and encumbrances of any nature except only the rights of Railroad under the Conditional Sale Agreement;
- (b) A certificate of acceptance by an authorized representative of Railroad stating that the cars covered by such certificate have been accepted by him on behalf of Railroad as conforming in all respects to the requirements and provisions of the Conditional Sale Agreement and further stating that there was plainly, distinctly, permanently and conspicuously marked, on metal plates or with stencilling on each side of each of the cars at the time of their acceptance the following words in letters not less than five-eighths (5/8) inch in height.

"THE CITIZENS AND SOUTHERN NATIONAL BANK, OWNER "

- (c) Manufacturer's invoice for the purchase price of each car so accepted;

- (d) An opinion or opinions of counsel of Manufacturer stating (i) that the Manufacturer is a duly organized and existing corporation in good standing under the laws of the State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) that the Conditional Sale Agreement has been duly authorized, executed and delivered by Manufacturer and is a valid instrument binding upon Manufacturer and enforceable against Manufacturer in accordance with its terms, and (iii) that this Agreement and Assignment has been duly authorized, executed and delivered by Manufacturer and is a valid instrument binding upon Manufacturer and enforceable against Manufacturer in accordance with its terms.

The interest payable pursuant to clause B of Section 3 of the Conditional Sale Agreement shall accrue from the respective dates of such payments by the Assignee to Manufacturer.

8. Assignee may assign its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from Railroad thereunder in respect of said cars. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of Assignee hereunder.

9. The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Georgia.

10. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original and such counterparts, together, shall constitute but one and the same instrument. Assignee agrees to deliver to Railroad one of such counterparts, or a certified copy thereof, in addition to the number required for recording or filing.

IN WITNESS WHEREOF, Manufacturer and Assignee have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized, and their respective corporate seals to be hereto affixed, duly attested, as of the day and year first above written.

PULLMAN INCORPORATED
(Pullman-Standard division)

By: MR Back
Vice President of
Pullman-Standard division

ATTEST:

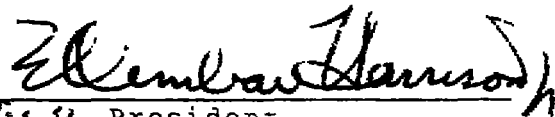
William O. Colidge
Assistant Secretary
Pullman Incorporated

THE CITIZENS AND SOUTHERN
NATIONAL BANK

ATTEST:


Assistant Cashier

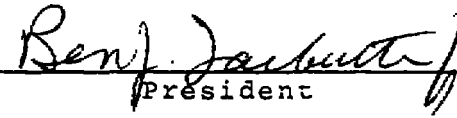
By:


Vice President

The foregoing Agreement and Assignment is acceptable to the undersigned, and the undersigned does hereby acknowledge receipt of the written notice of such assignment referred to in Section 14 of the Conditional Sale Agreement.

SANDERSVILLE RAILROAD COMPANY

By:


President

ATTEST:


Secretary

Sandersville Railroad Company

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, J. J. Clefford Notary Public in and for said County in the State aforesaid do hereby certify that M. R. Boock personally known to me to be a Vice President of the Pullman-Standard division of Pullman Incorporated and William O. Eldridge personally known to me to be the Assistant Secretary of Pullman Incorporated and personally known to me to be the same persons whose names are subscribed to the foregoing instrument appeared before me this day in person and severally acknowledged that as such Vice President and Assistant Secretary they signed and delivered said instrument as said Vice President and Assistant Secretary and caused the corporate seal of Pullman Incorporated to be affixed thereto pursuant to authority given by the Board of Directors of Pullman Incorporated as their free and voluntary act and deed and the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and seal this 19th day of November 1970.

J. J. Clefford
Notary Public

My Commission Expires November 16, 1971

STATE OF GEORGIA)
) SS:
COUNTY OF CHATHAM)

I, Garth L. Rhodes Notary Public in and for said County in the State aforesaid do hereby certify that E. Dunbar Harrison, Jr. personally known to me to be a Vice President of The Citizens and Southern National Bank and Joseph Smith personally known to me to be the Assistant Cashier of said corporation and personally known to me to be the same person whose names are subscribed to the foregoing instrument appeared before me this day in person and severally acknowledged that as such Vice President and Assistant Cashier they signed and delivered said instrument as Vice President and Assistant Cashier of said corporation and caused the corporate seal of said corporation to be affixed thereto pursuant to authority given by the Board of Directors of said corporation as their free and voluntary act and deed and the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and seal this 23rd day of November, 1970.

Garth L. Rhodes
Notary Public

My Commission Expires November 16, 1971